
SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1144

State of Washington

62nd Legislature

2012 Regular Session

By House Ways & Means (originally sponsored by Representatives McCoy, Crouse, Eddy, Morris, Haler, Kelley, Lias, Jacks, Frockt, and Hudgins)

READ FIRST TIME 03/01/11.

1 AN ACT Relating to renewable energy investment cost recovery
2 program; and amending RCW 82.16.110, 82.16.120, and 82.16.130.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 82.16.110 and 2011 c 179 s 2 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Administrator" means an owner and assignee of a community
9 solar project as defined in subsection (2)(a)(i) of this section that
10 is responsible for applying for the investment cost recovery incentive
11 on behalf of the other owners and performing such administrative tasks
12 on behalf of the other owners as may be necessary, such as receiving
13 investment cost recovery incentive payments, and allocating and paying
14 appropriate amounts of such payments to the other owners.

15 (2)(a) "Community solar project" means:

16 (i) A solar energy system that is capable of generating up to
17 seventy-five kilowatts of electricity and is owned by local
18 individuals, households, nonprofit organizations, nonprofit housing
19 organization, or nonutility businesses that is placed on the property

1 owned by a cooperating local governmental entity (~~that~~), a nonprofit
2 organization, or a nonprofit housing organization if the cooperating
3 entity, nonprofit organization, or nonprofit housing organization is
4 not in the light and power business or in the gas distribution
5 business;

6 (ii) A utility-owned solar energy system that is capable of
7 generating up to seventy-five kilowatts of electricity and that is
8 voluntarily funded by the utility's ratepayers where, in exchange for
9 their financial support, the utility gives contributors a payment or
10 credit on their utility bill for the value of the electricity produced
11 by the project; or

12 (iii) A solar energy system, placed on the property owned by a
13 cooperating local governmental entity (~~that~~), a nonprofit
14 organization, or a nonprofit housing organization if the cooperating
15 entity, nonprofit organization, or nonprofit housing organization is
16 not in the light and power business or in the gas distribution
17 business, (~~that~~) and the solar energy system is capable of generating
18 up to seventy-five kilowatts of electricity(~~(7)~~) and (~~that~~) is owned
19 by a company whose members are each eligible for an investment cost
20 recovery incentive for the same customer-generated electricity as
21 provided in RCW 82.16.120.

22 (b) For the purposes of "community solar project" as defined in (a)
23 of this subsection:

24 (i) "Company" means an entity that is:
25 (A)(I) A limited liability company;
26 (II) A cooperative formed under chapter 23.86 RCW; or
27 (III) A mutual corporation or association formed under chapter
28 24.06 RCW; and

29 (B) Not a "utility" as defined in this subsection (2)(b); and

30 (ii) "Nonprofit organization" means an organization exempt from
31 taxation under 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue
32 code of 1986, as amended, as of January 1, 2009; (~~and~~)

33 (iii) "Nonprofit housing organization" means an entity eligible for
34 assistance under RCW 43.185A.040 and engaged in activities eligible for
35 assistance under RCW 43.185A.030, including an entity materially
36 participating as a managing member of a limited liability company,
37 general partner of a partnership, or as an equivalent organization for

1 the purposes of accessing assistance from the Washington state housing
2 finance commission under chapter 43.180 RCW; and

3 (iv) "Utility" means a light and power business, an electric
4 cooperative, or a mutual corporation that provides electricity service.

5 (3) "Customer-generated electricity" means a community solar
6 project or the alternating current electricity that is generated from
7 a renewable energy system located in Washington and installed on an
8 individual's, businesses', or local government's real property that is
9 also provided electricity generated by a light and power business.
10 Except for community solar projects, a system located on a leasehold
11 interest does not qualify under this definition. Except for utility-
12 owned community solar projects, "customer-generated electricity" does
13 not include electricity generated by a light and power business with
14 greater than one thousand megawatt hours of annual sales or a gas
15 distribution business.

16 (4) "Economic development kilowatt-hour" means the actual kilowatt-
17 hour measurement of customer-generated electricity multiplied by the
18 appropriate economic development factor.

19 (5) "Local governmental entity" means any unit of local government
20 of this state including, but not limited to, counties, cities, towns,
21 municipal corporations, quasi-municipal corporations, special purpose
22 districts, and school districts.

23 (6) "Photovoltaic cell" means a device that converts light directly
24 into electricity without moving parts.

25 (7) "Renewable energy system" means a solar energy system, a
26 hydrokinetic energy system, an anaerobic digester as defined in RCW
27 82.08.900, or a wind generator used for producing electricity.

28 (8) "Solar energy system" means any device or combination of
29 devices or elements that rely upon direct sunlight as an energy source
30 for use in the generation of electricity.

31 (9) "Solar inverter" means the device used to convert direct
32 current to alternating current in a solar energy system.

33 (10) "Solar module" means the smallest nondivisible self-contained
34 physical structure housing interconnected photovoltaic cells and
35 providing a single direct current electrical output.

36 (11) "Stirling converter" means a device that produces electricity
37 by converting heat from a solar source utilizing a stirling engine.

1 (12) "Hydrokinetic energy system" means a device that generates
2 electricity from waves or directly from the flow of water in ocean
3 currents, tides, inland waterways, nonfish-bearing canals, or
4 irrigation districts, that does not require the impoundment or
5 diversion of water.

6 **Sec. 2.** RCW 82.16.120 and 2011 c 179 s 3 are each amended to read
7 as follows:

8 (1)(a) Any individual, business, local governmental entity, not in
9 the light and power business or in the gas distribution business, or a
10 participant in a community solar project may apply to the light and
11 power business serving the situs of the system, each fiscal year
12 beginning on July 1, 2005, for an investment cost recovery incentive
13 for each kilowatt-hour from a customer-generated electricity renewable
14 energy system.

15 (b) In the case of a community solar project as defined in RCW
16 82.16.110(2)(a)(i), the administrator must apply for the investment
17 cost recovery incentive on behalf of each of the other owners.

18 (c) In the case of a community solar project as defined in RCW
19 82.16.110(2)(a)(iii), the company owning the community solar project
20 must apply for the investment cost recovery incentive on behalf of each
21 member of the company.

22 (2)(a) Before submitting for the first time the application for the
23 incentive allowed under subsection (4) of this section, the applicant
24 must submit to the department of revenue and to the climate and rural
25 energy development center at the Washington State University,
26 established under RCW 28B.30.642, a certification in a form and manner
27 prescribed by the department that includes, but is not limited to, the
28 following information:

29 (i) The name and address of the applicant and location of the
30 renewable energy system.

31 (A) If the applicant is an administrator of a community solar
32 project as defined in RCW 82.16.110(2)(a)(i), the certification must
33 also include the name and address of each of the owners of the
34 community solar project.

35 (B) If the applicant is a company that owns a community solar
36 project as defined in RCW 82.16.110(2)(a)(iii), the certification must
37 also include the name and address of each member of the company;

1 (ii) The applicant's tax registration number;

2 (iii) That the electricity produced by the applicant meets the
3 definition of "customer-generated electricity" and that the renewable
4 energy system produces electricity with:

5 (A) Any solar inverters and solar modules manufactured in
6 Washington state;

7 (B) A wind generator powered by blades manufactured in Washington
8 state;

9 (C) A solar inverter manufactured in Washington state;

10 (D) A solar module manufactured in Washington state;

11 (E) A stirling converter manufactured in Washington state; ((~~or~~))

12 (F) A hydrokinetic energy system manufactured in Washington state;

13 or

14 (G) Solar or wind equipment manufactured outside of Washington
15 state;

16 (iv) That the electricity can be transformed or transmitted for
17 entry into or operation in parallel with electricity transmission and
18 distribution systems; and

19 (v) The date that the renewable energy system received its final
20 electrical permit from the applicable local jurisdiction.

21 (b) The Washington State University may charge for services to
22 cover the cost of processing applications and related technical
23 assistance to effectively administer the cost recovery program. If the
24 Washington State University charges for these activities, an applicant
25 must submit a payment along with the initial application. Application
26 charges may not exceed fair and reasonable costs associated with the
27 necessary and effective oversight of the cost recovery program.

28 (c) Within thirty days of receipt of the certification the
29 department of revenue must notify the applicant by mail, or
30 electronically as provided in RCW 82.32.135, whether the renewable
31 energy system qualifies for an incentive under this section. The
32 department may consult with the climate and rural energy development
33 center to determine eligibility for the incentive. System
34 certifications and the information contained therein are subject to
35 disclosure under RCW 82.32.330(3)(1).

36 (3)(a) ((~~By August 1st of each year application for the incentive~~
37 ~~must be made to~~)) If required by the light and power business serving
38 the situs of the system, persons receiving incentive payments must

1 apply to the light and power by August 1st of each year by
2 certification in a form and manner prescribed by the department that
3 includes, but is not limited to, the following information:

4 (i) The name and address of the applicant and location of the
5 renewable energy system.

6 (A) If the applicant is an administrator of a community solar
7 project as defined in RCW 82.16.110(2)(a)(i), the application must also
8 include the name and address of each of the owners of the community
9 solar project.

10 (B) If the applicant is a company that owns a community solar
11 project as defined in RCW 82.16.110(2)(a)(iii), the application must
12 also include the name and address of each member of the company;

13 (ii) The applicant's tax registration number;

14 (iii) The date of the notification from the department of revenue
15 stating that the renewable energy system is eligible for the incentives
16 under this section; and

17 (iv) A statement of the amount of kilowatt-hours generated by the
18 renewable energy system in the prior fiscal year.

19 (b) Within sixty days of receipt of the incentive certification the
20 light and power business serving the situs of the system must notify
21 the applicant in writing whether the incentive payment will be
22 authorized or denied. The business may consult with the climate and
23 rural energy development center to determine eligibility for the
24 incentive payment. Incentive certifications and the information
25 contained therein are subject to disclosure under RCW 82.32.330(3)(1).

26 (c)(i) Persons, administrators of community solar projects, and
27 companies receiving incentive payments must keep and preserve, for a
28 period of five years, suitable records as may be necessary to determine
29 the amount of incentive applied for and received. Such records must be
30 open for examination at any time upon notice by the light and power
31 business that made the payment or by the department. If upon
32 examination of any records or from other information obtained by the
33 business or department it appears that an incentive has been paid in an
34 amount that exceeds the correct amount of incentive payable, the
35 business may assess against the person for the amount found to have
36 been paid in excess of the correct amount of incentive payable and must
37 add thereto interest on the amount. Interest is assessed in the manner

1 that the department assesses interest upon delinquent tax under RCW
2 82.32.050.

3 (ii) If it appears that the amount of incentive paid is less than
4 the correct amount of incentive payable the business may authorize
5 additional payment.

6 (4) Except for community solar projects, the investment cost
7 recovery incentive may be paid fifteen cents per economic development
8 kilowatt-hour unless requests exceed the amount authorized for credit
9 to the participating light and power business. For community solar
10 projects, the investment cost recovery incentive may be paid thirty
11 cents per economic development kilowatt-hour unless requests exceed the
12 amount authorized for credit to the participating light and power
13 business. For the purposes of this section, the rate paid for the
14 investment cost recovery incentive may be multiplied by the following
15 factors:

16 (a) For customer-generated electricity produced using solar modules
17 manufactured in Washington state, a hydrokinetic energy system
18 manufactured in Washington state, or a solar stirling converter
19 manufactured in Washington state, two and four-tenths;

20 (b) For customer-generated electricity produced using a solar or a
21 wind generator equipped with an inverter manufactured in Washington
22 state, one and two-tenths;

23 (c) For customer-generated electricity produced using an anaerobic
24 digester, or by other solar equipment or using a wind generator
25 equipped with blades manufactured in Washington state, one; and

26 (d) For all other customer-generated electricity produced by wind,
27 eight-tenths.

28 (5)(a) No individual, household, business, or local governmental
29 entity is eligible for incentives provided under subsection (4) of this
30 section for more than five thousand dollars per year.

31 (b) Except as provided in (c) through (e) of this subsection (5),
32 each applicant in a community solar project is eligible for up to five
33 thousand dollars per year.

34 (c) Where the applicant is an administrator of a community solar
35 project as defined in RCW 82.16.110(2)(a)(i), each owner is eligible
36 for an incentive but only in proportion to the ownership share of the
37 project, up to five thousand dollars per year.

1 (d) Where the applicant is a company owning a community solar
2 project that has applied for an investment cost recovery incentive on
3 behalf of its members, each member of the company is eligible for an
4 incentive that would otherwise belong to the company but only in
5 proportion to each ownership share of the company, up to five thousand
6 dollars per year. The company itself is not eligible for incentives
7 under this section.

8 (e) In the case of a utility-owned community solar project, each
9 ratepayer that contributes to the project is eligible for an incentive
10 in proportion to the contribution, up to five thousand dollars per
11 year.

12 (6)(a) If requests for the investment cost recovery incentive
13 exceed the amount of funds available for credit to the participating
14 light and power business, (~~the incentive payments must be reduced~~
15 ~~proportionately~~) no new applications may be approved for the light and
16 power business, except as provided in (b) of this subsection.

17 (b) A new application may be approved for a light and power
18 business when requests for the investment cost recovery incentive
19 exceed the amount of funds available for credit to the participating
20 light and power business, if the light and power business meets the
21 requirements in RCW 82.16.130(1)(c) and the incentive payments are
22 reduced proportionately.

23 (7) The climate and rural energy development center at Washington
24 State University energy program may establish guidelines and standards
25 for technologies that are identified as Washington manufactured and
26 therefore most beneficial to the state's environment.

27 (8) The environmental attributes of the renewable energy system
28 belong to the applicant, and do not transfer to the state or the light
29 and power business upon receipt of the investment cost recovery
30 incentive.

31 (9) No incentive may be paid under this section for kilowatt-hours
32 generated before July 1, 2005, or after June 30, 2020.

33 (10) A local government entity that qualifies for the community
34 solar incentive program has an option to purchase a solar energy system
35 located on its property from the owner at fair market value after the
36 expiration of the cost recovery incentive program. The fair market
37 value must take into consideration the following:

1 (a) The energy production from the solar energy system over its
2 remaining useful life;

3 (b) The cost of the lease for the property that the solar energy
4 system is located; and

5 (c) Maintenance, insurance, and cost of removal of the solar energy
6 system if the host facility decides not to renew the lease.

7 **Sec. 3.** RCW 82.16.130 and 2010 c 202 s 3 are each amended to read
8 as follows:

9 (1)(a) A light and power business (~~(shall be)~~) is allowed a credit
10 against taxes due under this chapter in an amount equal to investment
11 cost recovery incentive payments made in any fiscal year under RCW
12 82.16.120. The credit (~~(shall)~~) must be taken in a form and manner as
13 required by the department. The credit under this section for the
14 fiscal year may not exceed one-half percent of the businesses' taxable
15 power sales due under RCW 82.16.020(1)(b) or one hundred thousand
16 dollars, whichever is greater.

17 (b) Except as provided in (c) of this subsection:

18 (i) Incentive payments to participants in a utility-owned community
19 solar project as defined in RCW 82.16.110(2)(a)(ii) may only account
20 for up to (~~(twenty-five)) fifteen~~ percent of the total allowable
21 credit(~~(-))~~); and

22 (ii) Incentive payments to participants in a company-owned
23 community solar project as defined in RCW 82.16.110(2)(a)(iii), except
24 for a limited liability company with a nonprofit housing organization
25 participating as a managing member for the purposes of accessing
26 assistance from the Washington state housing finance commission under
27 chapter 43.180 RCW, may only account for up to (~~(five)) fifteen~~ percent
28 of the total allowable credit.

29 (c) For light and power businesses providing electrical service
30 solely within a county with a population between thirty-nine thousand
31 and forty-three thousand five hundred, incentive payments to
32 participants in a utility-owned community solar project as defined in
33 RCW 82.16.110(2)(a)(ii) and incentive payments to participants in a
34 company-owned community solar project as defined in RCW
35 82.16.110(2)(a)(iii), other than a company-owned community solar
36 project that has as its owner a limited liability company with a
37 nonprofit housing organization participating as a managing member for

1 the purposes of accessing assistance from the Washington state housing
2 finance commission under chapter 43.180 RCW, may only account for up to
3 thirty percent of the total allowable credit.

4 (2) The credit may not exceed the tax that would otherwise be due
5 under this chapter. Refunds (~~(shall)~~) may not be granted in the place
6 of credits. Expenditures not used to earn a credit in one fiscal year
7 may not be used to earn a credit in subsequent years.

8 (~~(+2)~~) (3) For any business that has claimed credit for amounts
9 that exceed the correct amount of the incentive payable under RCW
10 82.16.120, the amount of tax against which credit was claimed for the
11 excess payments (~~(shall-be)~~) is immediately due and payable. The
12 department (~~(shall)~~) must assess interest but not penalties on the
13 taxes against which the credit was claimed. Interest (~~(shall-be)~~) is
14 assessed at the rate provided for delinquent excise taxes under chapter
15 82.32 RCW, retroactively to the date the credit was claimed, and
16 (~~(shall)~~) accrues until the taxes against which the credit was claimed
17 are repaid.

18 (~~(+3)~~) (4) The right to earn tax credits under this section
19 expires June 30, 2020. Credits may not be claimed after June 30, 2021.

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